

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 64

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO PROFESSIONAL LICENSES; CHANGING THE NAME OF THE  
THANATOPRACTICE ACT TO THE FUNERAL SERVICES ACT; CHANGING AND  
ADDING CERTAIN EDUCATIONAL REQUIREMENTS; CONVERTING CERTAIN  
LICENSES TO INTERN LICENSES; PROVIDING FOR THE RELINQUISHMENT  
OF ESTABLISHMENT LICENSES IN CERTAIN CASES; PROVIDING FOR  
REIMBURSEMENT OF CERTAIN COSTS; PROVIDING FOR CEASE AND DESIST  
ORDERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA  
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 12-10A-6 NMSA 1978 (being Laws 2003,  
Chapter 218, Section 6) is amended to read:

"12-10A-6. SPECIAL POWERS DURING A PUBLIC HEALTH  
EMERGENCY.--

A. In order to protect the health, safety and

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welfare of the people in the state during a public health  
emergency, the secretary of health, in coordination with the  
secretary of public safety and the director, may:

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(1) utilize, secure or evacuate health care  
facilities for public use; and

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(2) inspect, regulate or ration health care  
supplies as provided in Subsection B of this section.

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B. If a public health emergency results in a  
statewide or regional shortage of health care supplies, the  
secretary of health may control, restrict and regulate the  
allocation, sale, dispensing or distribution of health care  
supplies.

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C. The state medical investigator, after  
consultation with the secretary of health, the secretary of  
public safety, the director and the ~~chairman~~ chair of the  
board of ~~thanatopractice~~ funeral services, may implement and  
enforce measures to provide for the safe disposal of human  
remains that may be reasonable and necessary to respond to a  
public health emergency. The measures may include special  
provisions for embalming, burial, cremation, interment,  
disinterment, transportation and disposal of human remains. To  
the extent possible, the religious, cultural, family and  
individual beliefs of a deceased person or of the family of a  
deceased person shall be considered when disposing of human  
remains."

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SECTION 2. Section 24-11-1 NMSA 1978 (being Laws 1971, Chapter 112, Section 1, as amended) is amended to read:

"24-11-1. BOARD OF MEDICAL INVESTIGATORS--CREATION--MEMBERSHIP--COMPENSATION.--There is created the "board of medical investigators", consisting of the dean of the university of New Mexico school of medicine, the secretary of health, the chief of the New Mexico state police, the ~~[chairman]~~ chair of the ~~[state]~~ board of ~~[thanatopractice]~~ funeral services and the ~~[director of the New Mexico office]~~ secretary of Indian affairs. The members of the board of medical investigators shall receive no compensation for their services as board members other than as provided in the Per Diem and Mileage Act."

SECTION 3. Section 61-32-1 NMSA 1978 (being Laws 1993, Chapter 204, Section 1, as amended) is amended to read:

"61-32-1. SHORT TITLE.--Chapter 61, Article 32 NMSA 1978 may be cited as the "~~[Thanatopractice]~~ Funeral Services Act"."

SECTION 4. Section 61-32-2 NMSA 1978 (being Laws 1993, Chapter 204, Section 2) is amended to read:

"61-32-2. PURPOSE.--In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of the care and disposition of the dead human body, it is necessary to provide laws and regulations to govern the handling and care of the dead and the sensitivities of those

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who survive, whether they wish or do not wish rites or ceremonies. The primary responsibility and obligation of the board ~~[of thanatopractice]~~ of funeral services is to protect the public."

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SECTION 5. Section 61-32-3 NMSA 1978 (being Laws 1993, Chapter 204, Section 3, as amended) is amended to read:

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"61-32-3. DEFINITIONS.--As used in the ~~[Thanatopractice]~~ Funeral Services Act:

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~~[A.] "assistant funeral service practitioner" means a person licensed to engage in practice at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act, as an assistant funeral service practitioner as provided in that act;~~

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~~B.] "associate funeral service practitioner" means a person licensed to engage in practice at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act, as an associate funeral service practitioner as provided in that act;~~

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~~G.]~~ A. "board" means the board of ~~[thanatopractice]~~ funeral services;

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~~[D.]~~ B. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;

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~~[E.]~~ C. "cremains" means cremated remains;

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~~[F.]~~ D. "cremation" means the reduction of a dead

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human body by direct flame to a residue, which includes bone fragments;

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~~[G.]~~ E. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;

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~~[H.]~~ F. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;

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~~[I.]~~ G. "department" means the regulation and licensing department;

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~~[J.]~~ H. "direct disposer" means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Thanatopractice Act, as provided in that act;

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~~[K.]~~ I. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

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~~[L.]~~ J. "direct supervision" means that the supervising funeral service practitioner is physically present with and in direct control of the person being trained;

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~~[M.]~~ K. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery

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to a medical school, when the medical school assumes complete  
responsibility for the disposal of the body following medical  
study;

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[N.] L. "embalming" means the disinfection,  
preservation and restoration, when possible, of a dead human  
body by a licensed funeral service practitioner [~~a licensed  
associate funeral service practitioner~~] or a licensed funeral  
service intern under the supervision of a licensed funeral  
service practitioner;

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[O.] M. "ennichement" means interment of cremains  
in a niche in a columbarium, whether in an urn or not;

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[P.] N. "entombment" means interment of a casketed  
body or cremains in a crypt in a mausoleum;

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[Q.] O. "establishment" means every office,  
premises or place of business where the practice of funeral  
service or direct disposition is conducted or advertised as  
being conducted and includes commercial establishments that  
provide for the practice of funeral service or direct  
disposition services exclusively to licensed funeral or direct  
disposition establishments or a school of medicine;

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[R.] P. "funeral" means a period following death in  
which there is an organized, purposeful, time-limited,  
group-centered ceremony or rite, whether religious or not, with  
the body of the deceased present;

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[S.] Q. "funeral merchandise" means that personal

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property offered for sale in connection with the  
 transportation, funeralization or disposition of a dead human  
 body, including the enclosure into which a dead human body is  
 or cremains are directly placed, and excluding mausoleum  
 crypts, interment enclosures preset in a cemetery and  
 columbarium niches;

[F.] R. "funeral service intern" means a person  
 licensed to be in training for the practice of funeral service  
 under the supervision and instruction of a funeral service  
 practitioner at a funeral establishment or commercial  
 establishment, licensed pursuant to the [~~Thanatopractice~~]  
Funeral Services Act;

[U.] S. "funeral service practitioner" means a  
 person licensed to engage in the practice of funeral service at  
 a funeral establishment or commercial establishment that is  
 licensed pursuant to the [~~Thanatopractice~~] Funeral Services Act  
 [~~as provided in that act~~];

T. "funeral services" means those immediate  
post-death activities related to a dead human body and its care  
and disposition, whether with or without rites or ceremonies;  
but "funeral services" does not include disposition of the body  
by a school of medicine following medical study;

[V.] U. "general supervision" means that the  
 supervising funeral service practitioner is not necessarily  
 physically present in the establishment with the person being

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trained but is available for advice and assistance;

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[W-] V. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

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[X-] W. "jurisprudence examination" means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the [~~Thanatopractice~~] Funeral Services Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

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[Y-] X. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees; or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

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[Z-] Y. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

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[AA-] Z. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

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[BB-] AA. "practice of funeral service" means those activities allowed under the [~~Thanatopractice~~] Funeral Services

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Act by a funeral service practitioner [~~associate funeral service practitioner, assistant funeral service practitioner~~] or funeral service intern; and

[~~CC.~~] BB. "pulverization" means the process that reduces cremains to a granular substance [~~and~~

~~DD. "thanatopractice" means those immediate post-death activities related to the dead human body, its care and disposition, whether with or without rites or ceremonies, but not including disposition of the body by a school of medicine following medical study]."~~

SECTION 6. Section 61-32-4 NMSA 1978 (being Laws 1993, Chapter 204, Section 4, as amended) is amended to read:

"61-32-4. LICENSE REQUIRED.--

A. Unless licensed to practice under the [~~Thanatopractice~~] Funeral Services Act, a person shall not:

(1) practice as a funeral service practitioner, [~~associate funeral service practitioner, assistant funeral service practitioner~~] funeral service intern or direct disposer;

(2) use the title or [~~represent himself as~~] make any representation as being a funeral service practitioner, [~~associate funeral service practitioner, assistant funeral service practitioner~~] funeral service intern or direct disposer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a

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funeral service practitioner, [~~associate funeral service practitioner, assistant funeral service practitioner~~] funeral service intern or direct disposer; or

(3) maintain, manage or operate a funeral establishment, a commercial establishment, a direct disposition establishment or a crematory.

B. A person who engages in the practice or acts in the capacity of a funeral service practitioner, [~~associate funeral service practitioner, assistant funeral service practitioner~~] funeral service intern or direct disposer in this state, with or without a New Mexico license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the [~~Thanatopractice~~] Funeral Services Act.

C. A person who maintains, manages or operates a funeral establishment, commercial establishment, direct disposition establishment or a crematory in this state, with or without a New Mexico establishment or crematory license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the [~~Thanatopractice~~] Funeral Services Act."

SECTION 7. Section 61-32-5 NMSA 1978 (being Laws 1993, Chapter 204, Section 5, as amended) is amended to read:

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"61-32-5. BOARD CREATED.--

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A. There is created the "board of [~~thanatopractice~~]  
3 funeral services".

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B. The board is administratively attached to the  
5 department.

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C. The board consists of six members. Three members  
7 shall be funeral service practitioners who have been licensed in  
8 this state for at least five years; two members shall represent  
9 the public and shall not have been licensed for the practice of  
10 funeral service or direct disposition in this state or any other  
11 jurisdiction and shall not ever have had any financial interest,  
12 direct or indirect, in any funeral, commercial or direct  
13 disposition establishment or crematory; and one member shall be  
14 a licensed direct disposer or health care practitioner from the  
15 office of the state medical investigator who has been licensed  
16 in this state for at least five years.

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D. Members of the board shall be appointed by the  
18 governor for terms of four years. Each member shall hold office  
19 until [~~his~~] the member's successor is duly qualified and  
20 appointed. Vacancies shall be filled for [~~any~~] an unexpired  
21 term in the same manner as original appointments.

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E. Members of the board shall be reimbursed per diem  
23 and mileage as provided in the Per Diem and Mileage Act and  
24 shall receive no other compensation, perquisite or allowance.

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F. A simple majority of the board members currently

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serving constitutes a quorum.

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G. The board shall hold at least two regular meetings each year and shall meet at such other times as it deems necessary.

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H. No board member shall serve more than two full consecutive terms. The board shall recommend removal of any board member who has three unexcused absences from properly noticed meetings within a twelve-month period and may recommend removal of a board member for any other just cause.

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I. The board shall elect a ~~chairman~~ chair and other officers as deemed necessary to administer its duties."

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SECTION 8. Section 61-32-6 NMSA 1978 (being Laws 1993, Chapter 204, Section 6, as amended) is amended to read:

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"61-32-6. BOARD POWERS.--

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A. In addition to any other authority provided by law, the board has the power to:

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(1) adopt, in accordance with the provisions of the Uniform Licensing Act, and file, in accordance with the State Rules Act, rules ~~[and regulations]~~ necessary to carry out the provisions of the ~~[Thanatopractice]~~ Funeral Services Act;

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(2) adopt rules implementing continuing education requirements;

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(3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions pursuant to Section 61-1-3 NMSA 1978;

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(4) establish reasonable fees to carry out the provisions of the [~~Thanatopractice~~] Funeral Services Act;

(5) provide for investigations necessary to determine violations of the [~~Thanatopractice~~] Funeral Services Act;

(6) establish committees as the board deems necessary for carrying out the provisions of the [~~Thanatopractice~~] Funeral Services Act;

(7) apply for injunctive relief to enforce the provisions of the [~~Thanatopractice~~] Funeral Services Act or to restrain any violation of that act;

(8) impose a fine not to exceed five thousand dollars (\$5,000) for each violation, in addition to other administrative or disciplinary costs, and all fines shall be deposited in the [~~thanatopractice~~] funeral services fund; and

(9) conduct criminal background checks on applicants for licensure.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended performance of any power or duty granted under the [~~Thanatopractice~~] Funeral Services Act or for any neglect or default in the good faith performance or exercise of any such power or duty."

**SECTION 9.** Section 61-32-7 NMSA 1978 (being Laws 1993,

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Chapter 204, Section 7) is amended to read:

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"61-32-7. BOARD DUTIES.--The board shall:

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A. administer the provisions of the

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~~[Thanatopractice]~~ Funeral Services Act;

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B. provide for the examination, licensing and

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renewal of applicants or licensees; and

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C. provide for the inspection of establishments and

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crematories."

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SECTION 10. Section 61-32-8 NMSA 1978 (being Laws 1993,

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Chapter 204, Section 8, as amended) is amended to read:

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"61-32-8. INSPECTION--ACCESS--COUNSEL.--

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A. Inspection of establishments and crematories,

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including all records, financial or otherwise, is authorized

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during regular business hours. Acceptance of a license shall

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include permission for the board or its designee to enter the

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premises without legal process.

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B. An establishment or crematory shall maintain

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business records required by law or rule at the establishment or

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crematory.

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C. The board shall be represented by the attorney

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general. The board may employ special counsel, upon approval of

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the attorney general, to review and prosecute cases of consumer

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complaints against any person, establishment or crematory

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licensed pursuant to the ~~[Thanatopractice]~~ Funeral Services Act.

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Payment for the services shall be by the board."

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SECTION 11. Section 61-32-9 NMSA 1978 (being Laws 1993, Chapter 204, Section 9, as amended) is amended to read:

"61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE PRACTITIONER--FUNERAL SERVICE INTERN--DIRECT DISPOSER--  
[ASSOCIATE FUNERAL SERVICE PRACTITIONER--ASSISTANT FUNERAL SERVICE PRACTITIONER] CONVERSION OF CERTAIN LICENSES--TEMPORARY LICENSES.--

A. A license to practice as a funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that ~~[he]~~ the person:

(1) is at least eighteen years of age;

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies, making of at least fifty funeral arrangements and the directing of at least fifty funerals;

(3) has successfully completed ~~[any]~~ an examination, including a jurisprudence examination, prescribed by board rules;

(4) has not been convicted of unprofessional conduct or incompetency; and

~~[(5) has graduated from an institution accredited by the American board of funeral service education or~~

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~~any other successor recognized by the United States office of  
education for funeral service education; and~~

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~~(6) has successfully completed at least sixty  
semester hours of academic and professional instruction in an  
accredited college or university; provided, however, that an  
assistant funeral service practitioner need not satisfy the  
provisions of Paragraphs (5) and (6) of this subsection if the  
assistant funeral service practitioner has successfully  
completed examinations required by the board for practice as an  
associate funeral service practitioner and a funeral service  
practitioner]~~

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(5) has obtained an associate's degree in  
funeral science requiring the completion of at least sixty  
semester hours from an institution accredited by the American  
board of funeral service education or any other successor  
institution offering funeral service education recognized by the  
United States government.

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B. A license to practice as a funeral service intern  
shall be issued to any person who files a completed application,  
accompanied by the required fees and documentation, and who  
submits satisfactory evidence that ~~he~~ the person:

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- (1) is at least eighteen years of age;
- (2) has graduated from high school or the  
equivalent;
- (3) has submitted proof of employment and

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supervision as required by board rules. Except as may be allowed by board rule, a license as a funeral service intern is ~~[not ambulatory and is]~~ issued only for a specific funeral establishment ~~[only]~~ or an establishment that is part of a multi-establishment enterprise;

(4) has successfully completed ~~[any]~~ an examination, including a jurisprudence examination, prescribed by board rules; and

(5) has not been convicted of unprofessional conduct or incompetency.

C. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that ~~[he]~~ the person:

(1) is at least eighteen years of age;

~~[(2) has graduated from high school or the equivalent;]~~

(2) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution accredited by the American board of funeral service education or any other successor institution offering funeral service education and recognized by the United States government;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed

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by board rules; and

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(4) has not been convicted of unprofessional  
3 conduct or incompetency.

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~~[D. A license to practice as an assistant funeral  
5 service practitioner shall be issued to any person who, prior to  
6 June 18, 1993, held a valid license as an assistant funeral  
7 service practitioner and who was qualified to receive a renewal  
8 license on July 1, 1993.~~

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~~E. A license to practice as an associate funeral  
10 service practitioner shall be issued to any person who files a  
11 completed application, accompanied by the required fees and  
12 documentation, and who submits satisfactory evidence that he:~~

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~~(1) has been licensed as an assistant funeral  
14 service practitioner;~~

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~~(2) has successfully completed any  
16 examination, including a jurisprudence examination, prescribed  
17 by board rules; and~~

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~~(3) has not been convicted of unprofessional  
19 conduct or incompetency.]~~

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D. On and after July 1, 2012, the board shall not  
21 issue a new license that was formerly designated an "assistant  
22 funeral services practitioner" or "associate funeral services  
23 practitioner" license under a version of the Funeral Services  
24 Act in effect on June 30, 2012. A person holding one of these  
25 licenses that is valid as of June 30, 2012 shall be considered

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as holding a valid, renewable funeral services intern license  
subject to the general supervision of a licensed funeral  
services practitioner pursuant to the Funeral Services Act.

[F-] E. The board may adopt by rule requirements for  
issuing a temporary license that will be valid until the next  
scheduled board meeting."

**SECTION 12.** Section 61-32-11 NMSA 1978 (being Laws 1993,  
Chapter 204, Section 11, as amended) is amended to read:

"61-32-11. LICENSURE OF ESTABLISHMENTS--FUNERAL  
ESTABLISHMENTS--COMMERCIAL ESTABLISHMENTS--DIRECT DISPOSITION  
ESTABLISHMENTS--CREMATORIES.--

A. Funeral establishment licenses shall only be  
granted under the following terms and conditions:

(1) applications for licensure shall be upon  
forms furnished by the board and shall be accompanied by the  
required fee;

(2) the establishment shall be maintained at a  
specific location primarily devoted to the practice of funeral  
service and shall comply with the following minimum  
requirements:

(a) a chapel shall be present in which  
funerals may be conducted;

(b) a display room shall be present for  
displaying caskets and other funeral merchandise; and

(c) a preparation room shall be present

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with necessary drainage and ventilation and necessary  
instruments and supplies for the preparation and embalming of  
dead human bodies for burial or other disposition or  
transportation; and

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(3) a license shall not be issued or renewed  
by the board unless the establishment is in compliance with the  
[~~Thanatopractice~~] Funeral Services Act and board rules.

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B. Commercial establishment licenses shall only be  
granted under the following terms and conditions:

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(1) applications for licensure shall be upon  
forms furnished by the board and shall be accompanied by the  
required fee;

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(2) the establishment shall be maintained at a  
specific location primarily devoted to the practice allowed for  
a commercial establishment and shall comply with the following  
minimum requirements:

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(a) a preparation room shall be present  
with the necessary drainage and ventilation and necessary  
instruments and supplies for the preparation and embalming of  
dead human bodies for burial or other disposition and  
transportation; and

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(b) an office shall be present for  
conducting business; and

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(3) a license shall not be issued or renewed  
by the board unless the establishment is in compliance with the

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~~[Thanatopractice]~~ Funeral Services Act and board rules.

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C. Direct disposition establishment licenses shall only be granted under the following terms and conditions:

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(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

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(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a direct disposer and shall comply with the following minimum requirements:

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(a) a room shall be present with necessary drainage and ventilation for housing a refrigeration unit;

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(b) a refrigeration unit, thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, shall be present for sheltering of dead human bodies prior to burial or other disposition or transportation;

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(c) an office shall be present for conducting business;

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(d) necessary supplies for safely handling unembalmed dead human bodies; and

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(e) if funeral merchandise is made available, a display room shall be present for displaying

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caskets and other funeral merchandise; and

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(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the ~~[Thanatopractice]~~ Funeral Services Act and board rules.

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D. Crematory licenses shall only be granted under the following terms and conditions:

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(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

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(2) the crematory shall be maintained at a specific location, including a funeral, commercial or direct disposition establishment, primarily devoted to the practice allowed for a crematory and shall comply with the following minimum requirements:

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(a) a room shall be present with necessary ventilation for housing a cremation retort;

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(b) a cremation retort shall be present for cremating dead human bodies; and

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(c) a unit to pulverize cremated dead human bodies shall be present; and

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(3) no license shall be issued or renewed by the board unless the crematory is in compliance with the ~~[Thanatopractice]~~ Funeral Services Act and board rules.

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E. The board may adopt by rule additional requirements in the interest of public health, safety and welfare."

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SECTION 13. Section 61-32-13 NMSA 1978 (being Laws 1993, Chapter 204, Section 13, as amended) is amended to read:

"61-32-13. ESTABLISHMENTS--REQUIREMENTS--TEMPORARY LICENSES.--

A. Each establishment shall have a full-time licensee in charge; provided the establishment license is a privilege granted to the person to whom it is issued and is not transferable to other owners or operators or to another location than that designated on the license. Whenever an establishment no longer employs or otherwise has a full-time licensee in charge, the establishment shall immediately cease the practice of funeral service or direct disposition and the person to whom the establishment license is granted shall immediately return the establishment license to the board by certified mail, return receipt requested, or by another delivery service that provides a means of tracing an item in its delivery system.

B. The board may adopt by rule special requirements for ~~[multi-unit establishments that]~~ multi-establishment enterprises where the establishments are located within fifty miles of each other and [that] wish to share a licensee in charge.

C. The board may adopt by rule the requirements for reapplication or reinspection.

D. The board may adopt by rule requirements for issuing a temporary establishment or crematory license that will

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be valid until the next scheduled board meeting."

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SECTION 14. Section 61-32-17 NMSA 1978 (being Laws 1993, Chapter 204, Section 17, as amended) is amended to read:

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"61-32-17. DIRECT DISPOSER--SCOPE OF PRACTICE--  
LIMITATIONS.--

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A. Except as otherwise provided in the [~~Thanatopractice~~] Funeral Services Act, a direct disposer may transport and dispose of a dead human body and participate in any rites or ceremonies after final disposition of the body.

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B. Prior to interment, entombment or other final disposition of the body, a direct disposer shall not:

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(1) participate in any rites or ceremonies in connection with the final disposition of the body;

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14

(2) provide facilities for any such rites or ceremonies; and

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16

(3) have the body embalmed unless embalming is required by the place of disposition."

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SECTION 15. Section 61-32-20 NMSA 1978 (being Laws 1993, Chapter 204, Section 20, as amended) is amended to read:

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"61-32-20. EMBALMING.--

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A. All dead human bodies not disposed of within twenty-four hours after death or release or receipt by the establishment or crematory shall be embalmed in accordance with the [~~Thanatopractice~~] Funeral Services Act or stored under refrigeration as determined by board rule, unless otherwise

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required by regulation of the office of the state medical investigator or the secretary of health or by orders of an authorized official of the office of the state medical investigator, a court of competent jurisdiction or other authorized official.

B. A dead human body shall not be embalmed except by a funeral service practitioner [~~an associate funeral service practitioner~~] or a funeral service intern under the supervision of a funeral service practitioner.

C. When embalming is not required under the provisions of this section, a dead human body shall not be embalmed without express authorization by the:

- (1) surviving spouse or next of kin;
- (2) legal agent or personal representative of the deceased; or
- (3) person assuming responsibility for final disposition.

D. When embalming is not required, and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service practitioner [~~or associate funeral service practitioner~~] who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the

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2 embalming shall, within twenty-four hours after the embalming  
 3 procedure, complete and sign an embalming case report describing  
 4 the elapsed time since death, the condition of the remains  
 5 before and after embalming and the embalming procedures used.  
 6 The embalming case report shall be kept on file at the  
 7 establishment for a period of not less than seven years  
 8 following the embalming.

9 F. Except as provided in Subsection A of this  
 10 section, embalming is not required."

11 SECTION 16. Section 61-32-22 NMSA 1978 (being Laws 1993,  
 12 Chapter 204, Section 22, as amended) is amended to read:

13 "61-32-22. INACTIVE STATUS.--

14 A. A funeral service practitioner, [~~associate~~  
 15 ~~funeral service practitioner~~] funeral service intern or direct  
 16 disposer who has a current license may request that the license  
 17 be placed on inactive status. Except as provided in Subsection  
 18 E of this section, the board shall approve each request for  
 19 inactive status.

20 B. A license placed on inactive status may be  
 21 renewed within a period not to exceed five years following the  
 22 date the board granted the inactive status.

23 C. Renewal of an inactive license requires payment  
 24 of renewal and reinstatement fees as set forth by board rule and  
 25 compliance with the following requirements:

(1) certification by the licensee that [~~he~~]

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the licensee has not engaged in the practice of funeral service or direct disposition in this state during the inactive status;

(2) compliance with continuing education requirements established by board rule; and

(3) successful completion of an examination, which shall be administered at the discretion of the board, to certify continuing competency.

D. Disciplinary proceedings may be initiated or continued against a licensee who has been granted inactive status.

E. A license shall not be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated."

**SECTION 17.** Section 61-32-24 NMSA 1978 (being Laws 1993, Chapter 204, Section 24, as amended) is amended to read:

"61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

A. The board, in accordance with the procedures set forth in the Uniform Licensing Act, may take disciplinary action against any licensee, temporary licensee or applicant.

B. The board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the applicant or licensee is guilty of any of the following acts of commission or omission:

(1) conviction of an offense punishable by incarceration in a state penitentiary or federal prison;

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provided the board receives a copy of the record of conviction,  
certified to by the clerk of the court entering the conviction,  
which shall be conclusive evidence of the conviction;

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(2) fraud or deceit in procuring or attempting  
to procure a license;

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(3) gross negligence or incompetence;

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(4) unprofessional or dishonorable conduct,

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which includes:

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(a) misrepresentation or fraud;

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(b) false or misleading advertising;

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(c) solicitation of dead human bodies by

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the licensee [~~his~~] or the licensee's agents, assistants or

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employees, whether the solicitation occurs after death or while

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death is impending, provided that this shall not be deemed to

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prohibit general advertising;

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(d) solicitation or acceptance by a

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licensee of [~~any~~] a commission, bonus or rebate in consideration

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of recommending or causing a dead human body to be disposed of

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in [~~any~~] a cemetery, mausoleum or crematory;

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(e) using any funeral merchandise

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previously purchased, in whole or in part, except for

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transportation purposes, without prior written permission of the

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person selecting or paying for the use of the merchandise; and

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(f) failing to make disposition of a dead

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human body in the enclosure or container that was purchased for

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1 that purpose by the arrangers;

2 (5) violation of [~~any of~~] the provisions of  
3 the [~~Thanatopractice~~] Funeral Services Act or [~~any~~] a rule of  
4 the board;

5 (6) violation of any local, state or federal  
6 ordinance, law or regulation affecting the practice of funeral  
7 service, direct disposition or cremation, including the  
8 Prearranged Funeral Plan Regulatory Law or any regulations  
9 ordered by the superintendent of insurance;

10 (7) willful or negligent practice beyond the  
11 scope of the license issued by the board;

12 (8) refusing to release properly a dead human  
13 body to the custody of the person or entity who has the legal  
14 right to effect the release, [~~when~~] whether or not the  
15 authorized cost has been paid. If an establishment receives a  
16 dead human body for funeral services but the body is  
17 subsequently transferred to another establishment that completes  
18 or performs funeral services, the subsequent establishment shall  
19 be responsible for all reasonable nonprofessional service  
20 charges incurred by the next previous establishment prior to and  
21 including transfer of the body and the subsequent establishment  
22 shall reimburse the next previous establishment for those  
23 charges;

24 (9) failure to secure a necessary permit  
25 required by law for removal from this state or cremation of a

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dead human body;

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(10) knowingly making a false statement on a certificate of death;

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(11) failure to give full cooperation to the board or one of its committees, staff, inspectors, agents or an attorney for the board in the performance of official duties;

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(12) ~~has~~ having had a license, certificate or registration to practice revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;

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(13) failure to supervise adequately subordinate personnel;

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(14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public;

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(15) employing fraudulent billing practices;

19

or

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(16) practicing funeral service [~~direct disposition~~] or cremation without a current license.

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C. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a person who is licensed as or is an applicant

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for a license as a funeral service practitioner [~~associate funeral service practitioner, assistant funeral service practitioner~~] or funeral service intern is guilty of any of the following acts of commission or omission:

(1) practicing funeral service without a license or aiding or abetting an unlicensed person to practice funeral service; or

(2) permitting [~~an associate funeral service practitioner, assistant funeral service practitioner or~~] a funeral service intern to exceed the limitations set forth in the provisions of the [~~Thanatopractice~~] Funeral Services Act or the rules of the board.

D. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a direct disposer licensee [~~or applicant~~] or a direct disposition establishment licensee [~~or applicant~~] is guilty of any of the following acts of commission or omission:

(1) embalming, restoring, acting as a cosmetician or in any way altering the condition of a dead human body, except for washing and dressing;

(2) causing a body to be embalmed when embalming is not required by a place of disposition;

(3) prior to interment, entombment or other final disposition of a dead human body, participating in any

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rites or ceremonies in connection with such final disposition of the body, or providing facilities for any such rites or ceremonies;

(4) reclaiming, transporting or causing to be transported a dead human body after written release for disposition; or

(5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

E. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a crematory licensee or applicant or a crematory authority is guilty of any of the following acts of commission or omission:

(1) engaging or ~~[holding oneself out]~~ making any representation as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

(2) operating a crematory without a license or aiding and abetting a crematory to operate without a license; or

(3) engaging in conduct or activities for which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an

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unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

F. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

- (1) court reporters;
- (2) transcripts;
- (3) certification or notarization;
- (4) photocopies;
- (5) witness attendance and mileage fees;
- (6) postage for mailings required by law;
- (7) expert witnesses; and
- (8) depositions.

G. All fees, fines and costs imposed on an applicant, licensee, establishment or crematory shall be paid in full to the board before an initial or renewal license may be issued."

SECTION 18. Section 61-32-25 NMSA 1978 (being Laws 1993, Chapter 204, Section 25) is amended to read:

"61-32-25. ADDITIONAL PROHIBITIONS.--

A. No person licensed ~~[under]~~ pursuant to the provisions of the ~~[Thanatopractice]~~ Funeral Services Act shall advertise under any name that tends to mislead the public or

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that sufficiently resembles the professional or business name of  
another license holder or that may cause confusion or  
misunderstanding.

B. No person licensed [under] pursuant to the  
provisions of the [Thanatopractice] Funeral Services Act shall  
transport or cause to be transported by common carrier any dead  
human body out of this state when the licensee knows or ~~[had]~~  
has reason to believe that the dead human body carries any  
notifiable communicable disease or when the transportation would  
take place more than twenty-four hours after death, unless the  
body has been prepared or embalmed as provided in the  
[Thanatopractice] Funeral Services Act, unless approval for  
transportation has been given by the office of the medical  
investigator, the secretary of health, a court of competent  
jurisdiction or other authorized official or unless the body is  
placed in a sealed container.

C. No person licensed [under] pursuant to the  
provisions of the [Thanatopractice] Funeral Services Act shall  
remove, and no authorized person shall embalm, a dead human body  
when the authorized person has information indicating crime or  
violence of any sort in connection with the cause or manner of  
death, unless in accordance with instructions or regulations of  
the office of the medical investigator or until permission has  
been obtained from the office of the medical investigator or  
other authorized official."

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SECTION 19. Section 61-32-26 NMSA 1978 (being Laws 1993,  
Chapter 204, Section 26, as amended) is amended to read:

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"61-32-26. FUND ESTABLISHED.--

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A. There is created in the state treasury the  
"~~thanatopractice~~ funeral services fund".

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B. All money received or collected by the board or  
the department pursuant to provisions of the ~~Thanatopractice~~  
Funeral Services Act shall be deposited with the state treasurer  
for credit to the ~~thanatopractice~~ funeral services fund. The  
state treasurer shall invest the fund as other state funds are  
invested. All balances in the fund at the end of any fiscal  
year shall remain in the fund and shall not revert to the  
general fund.

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C. Money in the ~~thanatopractice~~ funeral services  
fund is appropriated to the board and shall be used only for the  
purpose of carrying out the provisions of the ~~Thanatopractice~~  
Funeral Services Act."

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SECTION 20. Section 61-32-27 NMSA 1978 (being Laws 1993,  
Chapter 204, Section 27) is amended to read:

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"61-32-27. CRIMINAL OFFENDER EMPLOYMENT ACT.--The  
provisions of the Criminal Offender Employment Act shall govern  
any consideration of criminal records required or permitted  
~~under~~ pursuant to the provisions of the ~~Thanatopractice~~  
Funeral Services Act."

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SECTION 21. Section 61-32-29 NMSA 1978 (being Laws 1993,

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Chapter 204, Section 29) is amended to read:

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"61-32-29. CONSTRUCTION.--Nothing in the

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[~~Thanatopractice~~] Funeral Services Act shall be construed to:

4

A. prohibit a funeral service practitioner [~~an associate funeral service practitioner, assistant funeral service practitioner~~] or funeral service intern under the supervision of a funeral service practitioner from providing a direct disposition at a funeral or commercial establishment; or

9

B. govern or limit the authority of any personal representative, trustee or other person having a fiduciary relationship with the deceased."

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SECTION 22. Section 61-32-30 NMSA 1978 (being Laws 1993, Chapter 204, Section 30, as amended) is amended to read:

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"61-32-30. CRIMINAL PENALTIES.--~~Any~~ A person who commits any of the following acts is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment of less than one year, or both:

19

A. violation of any provision of the [~~Thanatopractice~~] Funeral Services Act;

21

B. rendering or offering to render funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the [~~Thanatopractice~~] Funeral Services Act; or

25

C. advertising or using any designation, diploma or

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certificate tending to imply that the person is a practitioner of funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the ~~[Thanatopractice]~~ Funeral Services Act."

SECTION 23. Section 61-32-30.1 NMSA 1978 (being Laws 2003, Chapter 420, Section 11) is amended to read:

"61-32-30.1. UNLICENSED ACTIVITY--CIVIL PENALTY.--The board may impose a fine and costs as set forth in the ~~[Thanatopractice]~~ Funeral Services Act on a person who is found to have acted without a license in violation of the ~~[Thanatopractice]~~ Funeral Services Act by a court or an administrative proceeding as provided for in the ~~[Thanatopractice]~~ Funeral Services Act."

SECTION 24. Section 61-32-31 NMSA 1978 (being Laws 1993, Chapter 204, Section 31, as amended) is amended to read:

"61-32-31. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of ~~[thanatopractice]~~ funeral services is terminated on July 1, 2017, pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of Section 12-9-18 NMSA 1978 until July 1, 2018. Effective July 1, 2018, the ~~[Thanatopractice]~~ Funeral Services Act is repealed."

SECTION 25. A new section of the Funeral Services Act is enacted to read:

"[NEW MATERIAL] CEASE AND DESIST ORDERS--FINES--FINALITY--

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HEARINGS.--

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A. Notwithstanding the provisions of Sections 61-1-3  
 3 and 61-32-24 NMSA 1978, if the board has reasonable cause to  
 4 believe a person is committing a violation of a provision of the  
 5 Funeral Services Act, or a rule adopted pursuant to that act,  
 6 that creates a health risk for the community or a risk to the  
 7 orderly or prompt disposition of dead human bodies and immediate  
 8 enforcement is deemed necessary, the board may serve, in the  
 9 manner prescribed by Section 61-1-5 NMSA 1978, a cease and  
 10 desist order on a person to require that person to cease the  
 11 violation. The order shall:

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(1) indicate the violation and the general  
 13 nature of the evidence of the violation;

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(2) include a notice that if the person fails  
 15 to comply with the order within twenty-four hours, the person  
 16 may be subject to fines or costs, as provided in Sections  
 17 61-32-6 and 61-32-30.1 NMSA 1978, for noncompliance with the  
 18 order as a violation of the Funeral Services Act, in addition to  
 19 fines and costs imposed for a violation indicated in the order;  
 20 and

21

(3) include a notice that a hearing has been  
 22 scheduled to occur within five working days after service of the  
 23 cease and desist order and the hearing will proceed unless  
 24 waived by the person.

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B. If the person waives a hearing as provided in

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Subsection A of this section, the order shall be final and not subject to review or appeal. The board may apply for injunctive relief to enforce the cease and desist order.

C. If a hearing is held, it shall be conducted pursuant to the hearing procedures of the Uniform Licensing Act that are consistent with this section and the consequences of the hearing, including a right to review, shall occur pursuant to that act.

D. An order of the board pursuant to this section or an order of a court to enforce it shall not relieve or absolve a person affected by the order from another liability, penalty or sanction applicable under law."

SECTION 26. REPEAL.--Sections 61-32-15 and 61-32-16 NMSA 1978 (being Laws 1993, Chapter 204, Sections 15 and 16) are repealed.

SECTION 27. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012.

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